Polywell Development Sdn Bhd v Pentadbir Tanah Daerah Johor Bahru, Johor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-01–772 OF 2010

MOHD HISHAMUDIN, CLEMENT SKINNER AND AZIAH ALI JJCA

24 OCTOBER 2013

Land Law — Acquisition of land — Compensation — Appeal against amount of compensation awarded by High Court on reference — Whether High Court's decision on amount of compensation final and not appealable — Land Acquisition Act 1960 ss 40D & 49(1)

Parts of land belonging to the appellant were acquired under s 3(1)(a) of the Land Acquisition Act 1960 ('the Act') for the construction of a highway. Being dissatisfied with the amount of compensation awarded the appellant filed Form N pursuant to s 38(1) of the Act. The High Court awarded the sum of RM2,150,868.70 as additional compensation. The appellant then filed this appeal against the said decision.

Held, dismissing the appeal with costs:

(1) It was patently clear from the Form N submitted by the appellant that the appellant had objected to the amount of compensation. In respect of this claim the judicial commissioner accepted the opinion of the two assessors who were in accord that compensation in the sum of RM2,150,868.70 be awarded as opposed to the sum of RM7,685,000 asked for by the appellant (see para 5).

(2) Section 40D of the Act expressly provides that the final arbiter on the amount of compensation payable under the Act shall be the High Court. This appeal was in essence an appeal against the amount of compensation awarded. Hence, by virtue of s 40D(3) and s 49(1), this appeal had to be dismissed (see para 6).

[Bahasa Malaysia summary

Sebahagian tanah dimiliki oleh perayu telah diambil alih di bawah s 3(1)(a) Akta Tanah Pengambilan 1960 ('Akta') untuk pembinaan lebuhraya. Tidak berpuas hati dengan jumpah pampasan yang diawardkan perayu memfailkan Borang N berikutan s 38(1) Akta. Mahkamah Tinggi mengawardkan sejumlah

RM2,150,868.70 sebagai pampasan tambahan. Perayu kemudiannya memfailkan rayuan ini terhadap keputusan tersebut.

Diputuskan, menolak rayuan dengan kos

(1) Adalah jelas ternyata daripada Borang N yang dimasukkan oleh perayu bahawa perayu telah membantah kepada jumlah pampasan. Berkaitan tuntutan ini pesuruhjaya kehakiman menerima pandangan kedua-dua penilai siapa yang bermuafakat bahawa pampasan dalam sejumlah RM2,150,868.70 diawardkan menentang kepada jumlah sebanyak RM7,685,000 yang dipohon oleh perayu (lihat perenggan 5).

(2) Seksyen 40D Akta jelas memperuntukkan bahawa penentu terakhir ke atas jumlah pampasan yang dibayar di bawah Akta adalah Mahkamah Tinggi. Rayuan ini adalah pada dasarnya rayuan terhadap jumlah pampasan yang diawardkan. Maka, berikutan s 40D(3) dan s 49(1), rayuan ini patut ditolak (lihat perenggan 6).]

Notes

For cases on compensation, see 8(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2194–2241.

Legislation referred to

Land Acquisition Act 1960 ss 3(1)(a), 37(1), 38(1), 40D, 49(1), Forms K, N

Appeal from: Land Reference Nos MT(5)15–26 of 2007 and MT(5) 15–27 of 2007 (High Court, Johor Bharu)

Tho Kam Chew (KC Tho & Partners) for the appellant.
Shahrizal bin Shaari (Assistant State Legal Advisor, Office of Legal Advisor of Johor) for the respondent.

Aziah Ali JCA (delivering judgment of the court):

[1] In 2005 parts of land belonging to the appellant were acquired under s 3(1)(a) of the Land Acquisition Act 1960 ('the Act') for the construction of the Senai-Pasir Gudang-Desaru Highway (see Form K at p 46 of the appeal record). Being dissatisfied with the amount of compensation awarded the appellant filed Form N pursuant to s 38(1) of the Act (p 26 of the appeal record). The High Court Johor Bahru awarded the sum of RM2,150,868.70 as additional compensation. The appellant then filed this appeal against the said decision.

[2] At the commencement of the hearing before us we heard submissions on the issue raised by the respondent on whether the order made by the High

Court being an order on the amount of compensation is appealable in view of the provisions of s 40D of the Act which provides as follows:

(a) in a case before the court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors;

(b) where the assessors have each arrived at a decision which differs from each other then the judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon by that assessor; and

(c) any decision made under this section is final and there shall be no further appeal to a higher court on the matter.

[3] Learned counsel for the appellant Mr Tho Kam Chew conceded that by virtue of s 49(1) of the Act no appeal may be made against an award of compensation. Nevertheless learned counsel submits that this appeal is not against the award of compensation but rather against the purported failure by the learned judicial commissioner to consider, and failure by Her Ladyship to direct the assessors to consider:

(a) that the appellant is a housing developer;

(b) that to develop the truncated lands, underpasses must be constructed to join the truncated lands; and

(c) two underpasses must be constructed (the award of compensation provided for the construction of one underpass).

[4] Section 37(1) of the Act provides as follows:

> (1) Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11, has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to:
>
> (a) the measurement of the land;
>
> (b) the amount of the compensation;
>
> (c) the persons to whom it is payable;
>
> (d) the apportionment of the compensation.

Such objection shall be made in Form N as provided under s 38 of the Act which states:

> (1) Any objection made under section 37 shall be made by a written

application in Form N to the Land Administrator requiring that he refer the matter to the Court for its determination, and a copy thereof shall be forwarded by the Land Administrator to the Registrar of the Court.

(2) Every application under subsection (1) shall state fully the grounds on which objection to the award is taken, and at any hearing in Court no other grounds shall be given in argument, without leave of the Court.

[5] We had perused the Form N submitted by the appellant and we find that it is patently clear from the said Form that the appellant had objected to the amount of compensation. The appellant contended that two underpasses must be constructed instead of one for development of the truncated lands for which development approval had been obtained by the appellant at the material time. In the grounds of judgment the learned judicial commissioner has stated that … the appellant has conceded that the real issue is the claim for injurious affection for the cost of the underpass that is needed to be built … In respect of this claim the learned judicial commissioner accepted the opinion of the two assessors who were in accord that compensation in the sum of RM2,150,868.70 be awarded as opposed to the sum of RM7,685,000 asked for by the appellant.

[6] Section 40D of the Act expressly provides that the final arbiter on the amount of compensation payable under the Act shall be the High Court. The intention of the Legislature is reiterated again in s 49(1) as follows:

(1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:

Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

Having considered the provisions of the Act and the submissions of both learned counsel for the appellant and learned assistant state legal adviser for the respondent we agreed with the respondent that this appeal is in essence an appeal against the amount of compensation awarded. By virtue of s 40D(3) and

s 49(1) we were unanimous that this appeal be dismissed with costs of RM10,000 to the respondent. We further awarded the deposit to the respondent towards costs.

Appeal dismissed with costs.

Reported by Kanesh sundrum